

72 Am. Jur. 2d States, Etc. II A Refs.

American Jurisprudence, Second Edition | May 2021 Update

States, Territories, and Dependencies

Jack K. Levin, J.D.

II. Territories and Dependencies

A. General Principles

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West's Key Number Digest

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§ 130. Definitions

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West's Key Number Digest

West's Key Number Digest, [Territories](#)  1.1

As used in acts of Congress, the term "territory" may have different meanings so that the same political entity may be included in one act, but excluded in another,¹ depending on the character and aim of the act.² If Congress intends to exert all the power it possesses with respect to the subject matter, the word "territory" is used in its most comprehensive sense³ and includes even an unorganized territory.⁴

CUMULATIVE SUPPLEMENT

Cases:

Statute prohibiting the transportation of an individual within a "territory or possession" of the United States with intent to engage in criminal sexual activity did not apply to defendant who transported alleged victim solely within Puerto Rico; Puerto Rico was not a mere territory or possession of the United States, since it had attained status of commonwealth, term "commonwealth" was omitted from jurisdictional provision of statute when it was amended, and Congress had included term in jurisdictional provision of a similar statute. [18 U.S.C.A. § 2421](#). [U.S. v. Mercado-Flores](#), 109 F. Supp. 3d 467 (D.P.R. 2015).

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Footnotes

- 1 Davila-Perez v. Lockheed Martin Corp., 202 F.3d 464 (1st Cir. 2000); Americana of Puerto Rico, Inc. v. Kaplus, 368 F.2d 431 (3d Cir. 1966).
- 2 People of Puerto Rico v. Shell Co., 302 U.S. 253, 58 S. Ct. 167, 82 L. Ed. 235 (1937).
- 3 People of Puerto Rico v. Shell Co., 302 U.S. 253, 58 S. Ct. 167, 82 L. Ed. 235 (1937).
- 4 U. S. v. Standard Oil Co. of Cal., 404 U.S. 558, 92 S. Ct. 661, 30 L. Ed. 2d 713 (1972).
As to what is an organized territory, see § 132.

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§ 131. Nature of territories

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West's Key Number Digest, [Territories](#)  1.1

Territories of the United States are inchoate states and temporary sovereign governments, organized under the laws of Congress and limited only by their organic law and the Constitution of the United States.¹

Territorial governments generally have an executive, a legislative, and a judicial system in the same manner as do the United States and the separate states.² They do not have senators or representatives in the United States Congress, other than delegates with limited functions.³

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Footnotes

- 1 [Harris v. Municipality of St Thomas and St John](#), 111 F. Supp. 63 (D.V.I. 1953), order aff'd, 212 F.2d 323 (3d Cir. 1954).
- 2 [People of State of New York ex rel. Kopel v. Bingham](#), 211 U.S. 468, 29 S. Ct. 190, 53 L. Ed. 286 (1909). As to territorial courts, generally, see [Am. Jur. 2d, Federal Courts](#) §§ 2239 et seq.
- 3 [People of State of New York ex rel. Kopel v. Bingham](#), 211 U.S. 468, 29 S. Ct. 190, 53 L. Ed. 286 (1909).

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§ 132. "Organized" territories

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An organized territory is one in which a civil government has been established by an organic act of Congress.¹ A local legislature has been suggested as the distinguishing feature, but neither this nor any specific form of government is necessary to the existence of an organized territory.²

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Footnotes

- 1 U. S. v. Standard Oil Co. of Cal., 404 U.S. 558, 92 S. Ct. 661, 30 L. Ed. 2d 713 (1972).
2 I.C.C. v. U.S. ex rel. Humboldt S.S. Co., 224 U.S. 474, 32 S. Ct. 556, 56 L. Ed. 849, 3 Alaska Fed. 833 (1912).

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§ 133. Incorporated or unincorporated territories

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Law Reviews and Other Periodicals

Laughlin, [U.S. Territories and Affiliated Jurisdictions: Colonialism or Reasonable Choice for Small Societies](#), 37 Ohio N.U. L. Rev. 429 (2011)

Ra Jovet, [The Fourth Option: Modern Self-Determination of Peoples and the Possibilities of U.S. Federalism](#), 49 Rev. Der. P.R. 163 (2010)

A territory is incorporated if it has been made a part of the United States, usually by congressional action.¹ Incorporation has always been an important step leading to statehood.² Congress has been careful to bestow incorporation only on territories destined for statehood.³

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Footnotes

- 1 [Dorr v. U.S.](#), 195 U.S. 138, 24 S. Ct. 808, 49 L. Ed. 128 (1904); [Downes v. Bidwell](#), 182 U.S. 244, 21 S. Ct. 770, 45 L. Ed. 1088 (1901).
- 2 [Balzac v. Porto Rico](#), 258 U.S. 298, 42 S. Ct. 343, 66 L. Ed. 627 (1922).

3 [Smith v. Government of Virgin Islands](#), 375 F.2d 714 (3d Cir. 1967).
The history of incorporation is reviewed in [Boumediene v. Bush](#), 553 U.S. 723, 128 S. Ct. 2229, 171 L. Ed. 2d 41 (2008).

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2. Effect of Acquisition of Territories

§ 134. Status of acquired territory

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West's Key Number Digest

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If the U.S. government acquires territory as a result of discovery, conquest, or treaty, the federal government determines the relation of the territory to it in the absence of stipulations on the subject and may acquire and hold territory without immediately incorporating it into the United States.¹ Although territory acquired by the United States has not been fully incorporated into the United States, it is not foreign territory,² and an act of Congress is not necessary to make acquired territory domestic, once it has been ceded to the United States.³

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Footnotes

- ¹ [Downes v. Bidwell](#), 182 U.S. 244, 21 S. Ct. 770, 45 L. Ed. 1088 (1901).
- ² [American R. Co. of Porto Rico v. Didricksen](#), 227 U.S. 145, 33 S. Ct. 224, 57 L. Ed. 456 (1913); [Gonzales v. Williams](#), 192 U.S. 1, 24 S. Ct. 177, 48 L. Ed. 317 (1904); [Goetze v. U.S.](#), 182 U.S. 221, 21 S. Ct. 742, 45 L. Ed. 1065 (1901).
- ³ [The Diamond Rings](#), 183 U.S. 176, 22 S. Ct. 59, 46 L. Ed. 138 (1901).

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§ 135. Laws applicable

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Territory acquired by the United States, by treaty or otherwise, is subject to the U.S. Constitution and federal law, and not to the law of the government ceding it.¹ However, the municipal laws in effect prior to acquisition of the territory continue in force until they are abrogated or changed by the new government.² By the cession, public property passes from one government to the other, but private property remains as before, subject to preexisting municipal laws.³

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Footnotes

- ¹ [Dorr v. U.S.](#), 195 U.S. 138, 24 S. Ct. 808, 49 L. Ed. 128 (1904).
As to the power of the federal government over territories, generally, see §§ 137 et seq.
- ² [Murray v. Joe Gerrick & Co.](#), 291 U.S. 315, 54 S. Ct. 432, 78 L. Ed. 821, 92 A.L.R. 1259 (1934); [Downes v. Bidwell](#), 182 U.S. 244, 21 S. Ct. 770, 45 L. Ed. 1088 (1901).
- ³ [Murray v. Joe Gerrick & Co.](#), 291 U.S. 315, 54 S. Ct. 432, 78 L. Ed. 821, 92 A.L.R. 1259 (1934); [Downes v. Bidwell](#), 182 U.S. 244, 21 S. Ct. 770, 45 L. Ed. 1088 (1901).

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§ 136. Status of inhabitants

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The inhabitants of a territory acquired by the United States are not aliens even though the territory has not become an integral part of the United States.¹ However, they are not United States citizens until Congress chooses to make them so because the power to acquire territory by treaty implies the power not only to govern that territory but also to prescribe terms on which the United States will receive its inhabitants and what their status will be.²

Although the inhabitants of a territory are United States nationals rather than aliens, they may become aliens when complete independence is granted to the territory even though they have been admitted to the United States as nationals and have become permanent residents.³

CUMULATIVE SUPPLEMENT

Cases:

Statement in Guam Ancestral Lands Act that several local enactments provided a basis for former, original landowners to assert a claim for land recovery or for compensation where land recovery was not possible did not contain sufficiently mandatory terms to create reasonable expectation of entitlement to payment and, thus, son of private Guamanian landowners did not possess constitutionally protected interest in ancestral property rights under Due Process Clause; statement was only historical one included in background supporting enactment of Act, and did not grant any specific benefits or rights. [U.S. Const. Amend. 5](#); Guam Pub. L. 12-226, 16-111, 17-52, 20-222, 22-145, 23-23, 25-45 § 2 (1999). [Crawford v. Antonio B. Won Pat International Airport Authority](#), 917 F.3d 1081 (9th Cir. 2019).

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Footnotes

1 [American R. Co. of Porto Rico v. Didricksen](#), 227 U.S. 145, 33 S. Ct. 224, 57 L. Ed. 456 (1913).

2 [Rabang v. Boyd](#), 353 U.S. 427, 77 S. Ct. 985, 1 L. Ed. 2d 956 (1957).

3 [Rabang v. Boyd](#), 353 U.S. 427, 77 S. Ct. 985, 1 L. Ed. 2d 956 (1957).

Congress had the authority to classify a person born in the Philippine Islands as a "national" and then reclassify her as an alien to whom the United States immigration laws apply, pursuant to its constitutional authority to make rules and regulations respecting territory belonging to United States, its constitutional authority to establish a uniform rule of naturalization, and the Treaty of Paris provision that the civil rights and political status of native inhabitants of Philippines would be determined by Congress. [Valmonte v. I.N.S.](#), 136 F.3d 914 (2d Cir. 1998).

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The constitutional powers vested in Congress to govern territories are broad.¹ Congress has the power to make all needful rules and regulations respecting the territory belonging to the United States.² The territories bear much the same relation to the federal government that counties do to the states, and Congress may legislate for them as states do for their respective municipal organizations.³ Congress has the power to organize different territories differently and to grant to each such powers as it deems proper.⁴

Having rightfully acquired territory, the United States government is the only one that can impose laws on it, and its sovereignty over it is complete.⁵

There have been some differences of opinion about the particular clause of the Constitution from which the power of Congress to govern the territories comes but that it exists has always been conceded.⁶ The convention that framed the Constitution, in view of the territory already possessed and the possibility of acquiring more, inserted the "needful rules and regulations" clause.⁷ Some cases attribute Congress's power to govern the territories to this express grant, or regard it as arising from, and as incidental to, the right to acquire the territory itself.⁸

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Footnotes

1 Examining Bd. of Engineers, Architects and Surveyors v. Flores de Otero, 426 U.S. 572, 96 S. Ct. 2264,
2 49 L. Ed. 2d 65 (1976).
3 U.S. Const. Art. IV, § 3, cl. 2.
4 Cincinnati Soap Co. v. U.S., 301 U.S. 308, 57 S. Ct. 764, 81 L. Ed. 1122 (1937).
5 Harris v. Municipality of St Thomas and St John, 111 F. Supp. 63 (D.V.I. 1953), order aff'd, 212 F.2d 323
6 (3d Cir. 1954).
7 Luckenbach S.S. Co. v. U.S., 280 U.S. 173, 50 S. Ct. 148, 74 L. Ed. 356 (1930) (Canal Zone).
8 Kepner v. U.S., 195 U.S. 100, 24 S. Ct. 797, 49 L. Ed. 114 (1904); De Lima v. Bidwell, 182 U.S. 1, 21 S.
 Ct. 743, 45 L. Ed. 1041 (1901).
 Dorr v. U.S., 195 U.S. 138, 24 S. Ct. 808, 49 L. Ed. 128 (1904).
 Dorr v. U.S., 195 U.S. 138, 24 S. Ct. 808, 49 L. Ed. 128 (1904); Downes v. Bidwell, 182 U.S. 244, 21 S. Ct.
 770, 45 L. Ed. 1088 (1901); De Lima v. Bidwell, 182 U.S. 1, 21 S. Ct. 743, 45 L. Ed. 1041 (1901).

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§ 138. Extent of power

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West's Key Number Digest

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Although its power has limits,¹ Congress has plenary power with regard to the government of the territories.² It has full and complete legislative authority over the people of the territories and all the departments of the territorial governments, and it may do for the territories what the people, under the Constitution of the United States, may do for the states.³

The Constitution's Property Clause⁴ grants Congress plenary power to regulate and dispose of land within the territories.⁵ Congress also has the power to acquire land in aid of other powers conferred on Congress by the Constitution.⁶

Congress occupies a dual position with regard to territories: one, as the Congress of the United States limited by the Constitution, and the other as a local legislature, to which many of the constitutional limitations on Congress do not apply.⁷ For example, the power of Congress to deal with trade or commerce in the territories does not depend on the Commerce Clause.⁸

Concurrent jurisdiction that recognizes the power of the territories to regulate conduct on federal property is limited by the paramount right of the United States to revoke that grant at any time and resume direct control.⁹

CUMULATIVE SUPPLEMENT

Cases:

Congress has broad latitude to develop innovative approaches to territorial governance, and Congress may thus enable a United States territory's people to make large-scale choices about their own political institutions. [U.S.C.A. Const. Art. 4, § 3, cl. 2. Puerto Rico v. Sanchez Valle, 136 S. Ct. 1863 \(2016\).](#)

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Footnotes

- 1 § 141.
- 2 [Inter-Island Steam Nav. Co. v. Territory of Hawaii, by Public Utilities Commission of Hawaii, 305 U.S. 306, 59 S. Ct. 202, 83 L. Ed. 189 \(1938\); Cincinnati Soap Co. v. U.S., 301 U.S. 308, 57 S. Ct. 764, 81 L. Ed. 1122 \(1937\).](#)
Territories are subject to the ultimate control of Congress. [U.S. v. Government of Virgin Islands, 363 F.3d 276 \(3d Cir. 2004\).](#)
- 3 [Cincinnati Soap Co. v. U.S., 301 U.S. 308, 57 S. Ct. 764, 81 L. Ed. 1122 \(1937\); Posadas v. National City Bank of New York, 296 U.S. 497, 56 S. Ct. 349, 80 L. Ed. 351 \(1936\).](#)
- 4 [U.S. Const. Art. IV, § 3, cl. 2.](#)
- 5 [Utah Div. of State Lands v. U.S., 482 U.S. 193, 107 S. Ct. 2318, 96 L. Ed. 2d 162 \(1987\).](#)
- 6 [Utah Div. of State Lands v. U.S., 482 U.S. 193, 107 S. Ct. 2318, 96 L. Ed. 2d 162 \(1987\).](#)
- 7 [Cincinnati Soap Co. v. U.S., 301 U.S. 308, 57 S. Ct. 764, 81 L. Ed. 1122 \(1937\).](#)
- 8 [El Paso & N.E. Ry. Co. v. Gutierrez, 215 U.S. 87, 30 S. Ct. 21, 54 L. Ed. 106 \(1909\).](#)
- 9 [Water Isle Hotel and Beach Club, Ltd. v. Kon Tiki St. Thomas, Inc., 795 F.2d 325 \(3d Cir. 1986\).](#)

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§ 139. Direct legislation by Congress or delegation of authority

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West's Key Number Digest

West's Key Number Digest, [Territories](#)  [10](#), [11](#), [19](#)

Congress may legislate directly for any territory,¹ or it may delegate legislative power to such agencies as it may select,² such as a legislature elected by the citizens of the territory.³ The legislative power, which Congress constitutionally may delegate to a territory subject to the right of Congress to revise, alter, and revoke, covers all matters, which, within the limits of a state, are regulated only by the laws of the state.⁴

Laws passed by a territorial legislature are subject to the disapproval of Congress⁵ but remain in force until Congress has annulled them.⁶ Otherwise, the usual inference is that Congress approves that act.⁷

An intention on the part of Congress to supersede a local territorial act is not presumed in the absence of a clear expression to that effect.⁸

Because Congress has the power to ratify territorial legislation, even if that legislation was unauthorized when enacted, it also has the authority to ratify questionably valid enactments.⁹

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Footnotes

- ¹ [Inter-Island Steam Nav. Co. v. Territory of Hawaii](#), by [Public Utilities Commission of Hawaii](#), 305 U.S. 306, 59 S. Ct. 202, 83 L. Ed. 189 (1938); [Dorr v. U.S.](#), 195 U.S. 138, 24 S. Ct. 808, 49 L. Ed. 128 (1904); [Binns v. U.S.](#), 194 U.S. 486, 24 S. Ct. 816, 48 L. Ed. 1087, 2 Alaska Fed. 291 (1904).

- 2 U.S. v. Heinszen, 206 U.S. 370, 27 S. Ct. 742, 51 L. Ed. 1098 (1907).
- 3 De La Rama v. De La Rama, 201 U.S. 303, 26 S. Ct. 485, 50 L. Ed. 765 (1906); Binns v. U S, 194 U.S. 486,
24 S. Ct. 816, 48 L. Ed. 1087, 2 Alaska Fed. 291 (1904).
- 4 District of Columbia v. John R. Thompson Co., 346 U.S. 100, 73 S. Ct. 1007, 97 L. Ed. 1480 (1953).
- 5 Inter-Island Steam Nav. Co. v. Territory of Hawaii, by Public Utilities Commission of Hawaii, 305 U.S. 306,
59 S. Ct. 202, 83 L. Ed. 189 (1938); Chuoco Tiaco v. Forbes, 228 U.S. 549, 33 S. Ct. 585, 57 L. Ed. 960
(1913); Gromer v. Standard Dredging Co., 224 U.S. 362, 32 S. Ct. 499, 56 L. Ed. 801 (1912).
- 6 Atchison, T. & S.F. Ry. Co. v. Sowers, 213 U.S. 55, 29 S. Ct. 397, 53 L. Ed. 695 (1909).
- 7 Chuoco Tiaco v. Forbes, 228 U.S. 549, 33 S. Ct. 585, 57 L. Ed. 960 (1913).
- 8 Inter-Island Steam Nav. Co. v. Territory of Hawaii, by Public Utilities Commission of Hawaii, 305 U.S. 306,
59 S. Ct. 202, 83 L. Ed. 189 (1938).
- 9 HMW Industries, Inc. v. Wheatley, 504 F.2d 146 (3d Cir. 1974).

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§ 140. Taxation

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Congress may, as a local legislature, enact a system of taxation for each territory, unhampered by the Uniformity Clause in the Constitution.¹ In the exercise of this power, Congress, like any state legislature unrestricted by constitutional provisions, may, at its discretion, wholly exempt certain classes of property from taxation or may tax them at a lower rate than other property.²

Regardless of whether codified locally, all provisions of the Internal Revenue Code have force in the Virgin Islands unless they are manifestly inapplicable or incompatible with the separate territorial income tax.³

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Footnotes

- 1 [Binns v. U S](#), 194 U.S. 486, 24 S. Ct. 816, 48 L. Ed. 1087, 2 Alaska Fed. 291 (1904).
- 2 [Binns v. U S](#), 194 U.S. 486, 24 S. Ct. 816, 48 L. Ed. 1087, 2 Alaska Fed. 291 (1904).
- 3 [WIT Equipment Company, Inc. v. Director, Virgin Islands Bureau of Internal Revenue](#), 185 F. Supp. 2d 500 (D.V.I. 2001).

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§ 141. Constitutional limits on power

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The power of Congress to make laws for the government of territories has limits.¹ Congress, in legislating for the territories, is subject to those fundamental limitations in favor of personal rights that are formulated in the U.S. Constitution and its amendments.² In common with all the other legislative powers of Congress, the power to legislate for the territories finds limits in the express prohibitions on Congress to legislate.³ In the exercise of the legislative power, Congress may not pass an ex post facto law or bill of attainder, for example.⁴

Even if the people of the insular possessions are regarded as aliens, they are entitled, under the principles of the Constitution, to be protected in life, liberty, and property, and they are not subject to an unrestrained power on the part of Congress to deal with them on the theory that they do not have rights that it is bound to respect.⁵ Congress thus may not deprive the inhabitants of a territory of property or liberty without due process.⁶

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Footnotes

- 1 [Dorr v. U.S.](#), 195 U.S. 138, 24 S. Ct. 808, 49 L. Ed. 128 (1904).
- 2 [Dorr v. U.S.](#), 195 U.S. 138, 24 S. Ct. 808, 49 L. Ed. 128 (1904); [Territory of Hawaii v. Mankichi](#), 190 U.S. 197, 23 S. Ct. 787, 47 L. Ed. 1016 (1903); [Downes v. Bidwell](#), 182 U.S. 244, 21 S. Ct. 770, 45 L. Ed. 1088 (1901).
- 3 [Dorr v. U.S.](#), 195 U.S. 138, 24 S. Ct. 808, 49 L. Ed. 128 (1904).
- 4 [Dorr v. U.S.](#), 195 U.S. 138, 24 S. Ct. 808, 49 L. Ed. 128 (1904).

5 [Downes v. Bidwell](#), 182 U.S. 244, 21 S. Ct. 770, 45 L. Ed. 1088 (1901).

6 [McFadden v. Blocker](#), 3 Indian Terr. 224, 54 S.W. 873 (Indian Terr. 1900).

There may not exist under the American flag any governmental authority untrammelled by the requirements of due process. [Mora v. Mejias](#), 206 F.2d 377 (1st Cir. 1953).

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§ 142. Application of U.S. Constitution to territories

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[Rights of Alien Detainees Held Outside the United States as to Their Treatment and Conditions of Detainment](#), 6 A.L.R. Fed. 2d 185

Law Reviews and Other Periodicals

Gelpi, [The Insular Cases: a Comparative Historical Study of Puerto Rico, Hawaii, and the Philippines](#), 58 Fed. Law. 22 (2011)

Congress may make constitutional provisions applicable to territories in which they would not otherwise be controlling.¹ Congress must act consistently with the U.S. Constitution, once it has been formally extended to a territory, and if Congress has extended the Constitution to a territory in its organic act, it may not subsequently withdraw that provision.²

Under the doctrine of territorial incorporation,³ the U.S. Constitution applies in full in incorporated territories destined for statehood but only in part in unincorporated territories.⁴ The formal legal status of a given territory affects, to some extent, the political branches' control over that territory, and de jure sovereignty is a factor that bears on which constitutional guarantees apply there.⁵ However, as early as 1922, the Supreme Court has recognized that even in unincorporated territories, the federal government was bound to provide to noncitizen inhabitants guarantees of certain fundamental personal rights declared in the Constitution.⁶ While the Constitution grants Congress and the President the power to acquire, dispose of, and govern territory, the political branches do not have the power to determine whether certain provisions of the Constitution apply in unincorporated territories.⁷

It has also been noted that because the limitation on the application of the United States Constitution in unincorporated territories is based in part on the need to preserve Congress's ability to govern those possessions and may be overruled by Congress, a legislative determination that a constitutional provision may be implemented in a territory is entitled to great weight.⁸

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Footnotes

- 1 [Torres v. Com. of Puerto Rico](#), 442 U.S. 465, 99 S. Ct. 2425, 61 L. Ed. 2d 1 (1979).
- 2 [Downes v. Bidwell](#), 182 U.S. 244, 21 S. Ct. 770, 45 L. Ed. 1088 (1901).
As to the application of this rule to the right to trial by jury, see § 143.
- 3 § 133.
- 4 [Boumediene v. Bush](#), 553 U.S. 723, 128 S. Ct. 2229, 171 L. Ed. 2d 41 (2008).
- 5 [Boumediene v. Bush](#), 553 U.S. 723, 128 S. Ct. 2229, 171 L. Ed. 2d 41 (2008).
- 6 [Boumediene v. Bush](#), 553 U.S. 723, 128 S. Ct. 2229, 171 L. Ed. 2d 41 (2008) (referring to; [Balzac v. Porto Rico](#), 258 U.S. 298, 42 S. Ct. 343, 66 L. Ed. 627 (1922)).
- 7 [Boumediene v. Bush](#), 553 U.S. 723, 128 S. Ct. 2229, 171 L. Ed. 2d 41 (2008) (dealing with the suspension of habeas corpus at Guantanamo Bay, Cuba, discussed in [Am. Jur. 2d, Habeas Corpus](#) § 3).
- 8 [Torres v. Com. of Puerto Rico](#), 442 U.S. 465, 99 S. Ct. 2425, 61 L. Ed. 2d 1 (1979).

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West's Key Number Digest, [Territories](#)  8

Law Reviews and Other Periodicals

Gonzales Rose, [The exclusion of non-English-speaking jurors: remedying a century of denial of the Sixth Amendment in the federal courts of Puerto Rico](#), 46 Harv. C.R.-C.L. L. Rev. 497 (2011)

The provisions of the Sixth and Seventh Amendments securing the right of trial by jury apply to judicial proceedings in the incorporated territories of the United States.¹ In such cases, Congress does not have the power to enact legislation that would deprive the people of the territory of the right to a jury trial thus secured,² being that as constituted as it was at common law, of 12 persons.³

The provisions of the United States Constitution for jury trials in civil and criminal cases do not apply to territories that have not been incorporated into the Union in the absence of a congressional enactment.⁴ Until Congress does act by extending the right to jury trial to a newly acquired territory, the prevailing system of judicial procedure is applicable and controlling.⁵

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Footnotes

- 1 Black v. Jackson, 177 U.S. 349, 20 S. Ct. 648, 44 L. Ed. 801 (1900).
- 2 Downes v. Bidwell, 182 U.S. 244, 21 S. Ct. 770, 45 L. Ed. 1088 (1901).
- 3 Gurvich v. U S, 198 U.S. 581, 25 S. Ct. 803, 49 L. Ed. 1172, 2 Alaska Fed. 383 (1905) (Alaska); Queenan
v. Territory, 1901 OK 57, 11 Okla. 261, 71 P. 218 (1901), *aff'd*, 190 U.S. 548, 23 S. Ct. 762, 47 L. Ed.
1175 (1903).
- 4 Balzac v. Porto Rico, 258 U.S. 298, 42 S. Ct. 343, 66 L. Ed. 627 (1922) (Puerto Rico); Hawkins v. Bleakly,
243 U.S. 210, 37 S. Ct. 255, 61 L. Ed. 678 (1917); Dowdell v. U.S., 221 U.S. 325, 31 S. Ct. 590, 55 L.
Ed. 753 (1911) (Philippine Islands); Fernandez y Perez v. Perez y Fernandez, 202 U.S. 80, 26 S. Ct. 561,
50 L. Ed. 942 (1906) (Puerto Rico).
- 5 Territory of Hawaii v. Mankichi, 190 U.S. 197, 23 S. Ct. 787, 47 L. Ed. 1016 (1903).

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§ 144. Organization; officers

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The form of government for the territories established by Congress is not prescribed and need not necessarily be the same in all territories.¹ However, the form generally adopted is that of a quasi-state government, with executive, legislative, and judicial officers, with the legislature endowed with the power of local taxation and local expenditures.²

The officers of a territory whose offices are created by the territorial legislature, pursuant to a statute amended and approved by Congress, derive their power and authority from the territory and not from Congress and are therefore governed by the appropriate laws of the territory.³

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Footnotes

- [1](#) [I.C.C. v. U.S. ex rel. Humboldt S.S. Co.](#), 224 U.S. 474, 32 S. Ct. 556, 56 L. Ed. 849, 3 Alaska Fed. 833 (1912); [Binns v. U S](#), 194 U.S. 486, 24 S. Ct. 816, 48 L. Ed. 1087, 2 Alaska Fed. 291 (1904).
- [2](#) [Binns v. U S](#), 194 U.S. 486, 24 S. Ct. 816, 48 L. Ed. 1087, 2 Alaska Fed. 291 (1904).
- [3](#) [Schuerman v. Territory of Arizona](#), 184 U.S. 342, 22 S. Ct. 406, 46 L. Ed. 580 (1902).

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4. Organization and Operation of Territories

§ 145. Powers of territorial governments, generally

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The legislative, executive, and judicial departments of a territorial government have the powers that all these departments of government have exercised, which are conferred on them by act of Congress. As the territories are usually organized, the territorial government has all civil and judicial power necessary for local government.¹ A territorial government has the power and right as an act of state to expel foreigners whose presence is deemed inimical and dangerous to the government.² A territory also has the power to limit the right to engage in coastwise trade to those who agree to carry the mail free.³

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Footnotes

- ¹ [Chuoco Tiaco v. Forbes](#), 228 U.S. 549, 33 S. Ct. 585, 57 L. Ed. 960 (1913).
As to the power of a territory to tax, generally, see [Am. Jur. 2d, State and Local Taxation §§ 1 et seq.](#)
- ² [Chuoco Tiaco v. Forbes](#), 228 U.S. 549, 33 S. Ct. 585, 57 L. Ed. 960 (1913) (Philippine Islands).
- ³ [Board of Public Utility Com'rs v. Ynchausti & Co.](#), 251 U.S. 401, 40 S. Ct. 277, 64 L. Ed. 327 (1920).

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§ 146. Territorial legislation

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A territorial legislature has all legislative power except as limited by the Constitution of the United States, the applicable organic act, and the laws of Congress.¹ The organic acts of some territories have provided that the legislative power of the territory is to extend to all rightful subjects of legislation, consistent with the Constitution of the United States and the provisions of the act.² The term "rightful" does not authorize the courts to question an act of a territorial legislature on the ground that it is unreasonable, unjust, unequal, or oppressive so long as the act is within the limits fixed by the fundamental law.³

Among those subjects that have been declared to be "rightful subjects of legislation" consistent with the Constitution and the laws of the United States are—

— the levy of license taxes for the privilege of fishing in territorial waters.⁴

— imposition of taxes on water carriers, and the supervision, regulation, and taxation of utilities.⁵

— imposition of restrictions on corporate ownership of land.⁶

— enactment of legislation confirming public rights to use and enjoy beaches.⁷

— regulation and control of activity within territorial waters, at least in the absence of conflicting federal legislation.⁸

The term "local application," as used in congressional legislation conferring on a territory the power to enact legislation having local application, may be no broader, most liberally interpreted, than all rightful subjects of legislation; the term implies

limitation to subjects having relevant ties within the territory and laws growing out of the needs of the territory and governing relations with it.⁹

Observation:

Local laws enacted under legislative power that has been delegated by Congress are considered territorial rather than federal.¹⁰

Members of territorial legislatures have legislative immunity, with regard to matters within the scope of policymaking.¹¹

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Footnotes

- 1 Asiatic Petroleum Co. (Philippine Islands) v. Insular Collector of Customs, 297 U.S. 666, 56 S. Ct. 651, 80 L. Ed. 967 (1936); Farrington v. Tokushige, 273 U.S. 284, 47 S. Ct. 406, 71 L. Ed. 646 (1927); Yu Cong Eng v. Trinidad, 271 U.S. 500, 46 S. Ct. 619, 70 L. Ed. 1059 (1926); Christianson v. King County, 239 U.S. 356, 36 S. Ct. 114, 60 L. Ed. 327 (1915).
- 2 U.S. v. Marvin, 212 U.S. 275, 29 S. Ct. 297, 53 L. Ed. 510 (1909).
- 3 Baldrige v. Morgan, 15 N.M. 249, 106 P. 342 (1910).
- 4 Pacific American Fisheries v. Territory of Alaska, 269 U.S. 269, 46 S. Ct. 110, 70 L. Ed. 270, 5 Alaska Fed. 285 (1925); Haavik v. Alaska Packers' Ass'n, 263 U.S. 510, 44 S. Ct. 177, 68 L. Ed. 414 (1924).
- 5 Inter-Island Steam Nav. Co. v. Territory of Hawaii, by Public Utilities Commission of Hawaii, 305 U.S. 306, 59 S. Ct. 202, 83 L. Ed. 189 (1938).
- 6 People of Puerto Rico v. Rubert Hermanos, Inc., 309 U.S. 543, 60 S. Ct. 699, 84 L. Ed. 916 (1940).
- 7 Water Isle Hotel and Beach Club, Ltd. v. Kon Tiki St. Thomas, Inc., 795 F.2d 325 (3d Cir. 1986).
- 8 Alaska v. Arctic Maid, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).
- 9 Granville-Smith v. Granville-Smith, 349 U.S. 1, 75 S. Ct. 553, 99 L. Ed. 773 (1955).
- 10 Temengil v. Trust Territory of Pacific Islands, 881 F.2d 647 (9th Cir. 1989).
- 11 Alburquerque v. Faz Alzamora, 357 F. Supp. 2d 385 (D.P.R. 2004); Hispanos Unidos v. Government of U.S. Virgin Islands, 314 F. Supp. 2d 501 (D.V.I. 2004) (noting speech and debate clause in organic act).

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5. Actions by or Against Territories

§ 147. Actions by territories; defenses against claims

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A territory, like a state,¹ may institute a suit in any of its courts, whether doing so is required by its pecuniary interests or the general public welfare, and may adopt any legal remedy or measure available to a private suitor.² Furthermore, the claims of a territory are not subject to the defenses of laches and the statute of limitations unless expressly waived.³

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Footnotes

- ¹ [§ 89.](#)
- ² [In re Hooper's Estate, 359 F.2d 569 \(3d Cir. 1966\).](#)
- ³ [In re Hooper's Estate, 359 F.2d 569 \(3d Cir. 1966\).](#)

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§ 148. Actions against territories

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West's Key Number Digest, [Territories](#)  32

Law Reviews and Other Periodicals

Chandler, [Puerto Rico's Eleventh Amendment Status Anxiety](#), 120 Yale L.J. 2183 (2011)

Incorporated territories are immune from suit without their consent.¹ Such immunity also applies to unincorporated territories.² Generally, the same rules that apply to waiver of immunity by states³ govern whether a territory has waived immunity,⁴ and Puerto Rico is treated as a state for purposes of the 11th Amendment.⁵

CUMULATIVE SUPPLEMENT

Cases:

Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) created the Financial Oversight and Management Board for Puerto Rico to restructure the debt of the Commonwealth of Puerto Rico through quasi-bankruptcy proceedings. [48 U.S.C.A. § 2101 et seq. In re Financial Oversight and Management Board for Puerto Rico](#), 954 F.3d 1 (1st Cir. 2020).

Motorists who had allegedly paid duplicate automobile insurance premiums to the Commonwealth of Puerto Rico, prior to commencement of its debt adjustment proceeding under the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), by failing to trace these alleged duplicate premiums from the segregated account in which they were initially deposited into the non-segregated account to which a portion of the funds were transferred for use in paying the Commonwealth's general budget expenses, waived any prima facie right of ownership that they had in any non-segregated funds, so that lower court acted well within its discretion in denying their motion for relief from automatic stay to pursue recovery of such funds. 11 U.S.C.A. § 362(d)(1); 48 U.S.C.A. § 2101 et seq. *In re Financial Oversight and Management Board for Puerto Rico*, 939 F.3d 340 (1st Cir. 2019).

General statements regarding the possibility of sale or privatization of assets of the Puerto Rico Electric Power Authority (PREPA), in connection with the restructuring of the Commonwealth's debt under the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), did not allege the kind of concrete and particularized injury needed to confer standing on holder of bonds issued by the Commonwealth, on organization representing former employees of the PREPA, or on other residents of Puerto Rico to pursue cause of action to enjoin sale. 48 U.S.C.A. § 2101 et seq., *In re Financial Oversight and Management Board for Puerto Rico*, 404 F. Supp. 3d 536 (D.P.R. 2019).

Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) precluded challenges by representatives of Puerto Rico legislature to refusal to certify legislature's budget and certification of new fiscal plan and budget by Financial Oversight and Management Board for Puerto Rico; PROMESA explicitly stated that district courts lacked jurisdiction to review challenges to Board's certification decisions. 48 U.S.C.A. § 2126(e). *In re Financial Oversight and Management Board for Puerto Rico*, 327 F. Supp. 3d 364 (D.P.R. 2018).

Puerto Rico is considered a "state" for purposes of the Eleventh Amendment. U.S.C.A. Const.Amend. 11. *Camacho-Morales v. Caldero*, 68 F. Supp. 3d 261 (D.P.R. 2014).

[END OF SUPPLEMENT]

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Footnotes

- 1 *People of Porto Rico v. Rosaly y Castillo*, 227 U.S. 270, 33 S. Ct. 352, 57 L. Ed. 507 (1913).
As to the states' sovereign immunity, generally, see §§ 101 et seq.
- 2 *Richardson v. Fajardo Sugar Co.*, 241 U.S. 44, 36 S. Ct. 476, 60 L. Ed. 879 (1916); *People of Porto Rico v. Emmanuel*, 235 U.S. 251, 35 S. Ct. 33, 59 L. Ed. 215 (1914); *People of Porto Rico v. Ramos*, 232 U.S. 627, 34 S. Ct. 461, 58 L. Ed. 763 (1914); *People of Porto Rico v. Rosaly y Castillo*, 227 U.S. 270, 33 S. Ct. 352, 57 L. Ed. 507 (1913); *Marx v. Government of Guam*, 866 F.2d 294 (9th Cir. 1989) (Guam).
- 3 §§ 121 et seq.
- 4 *Rivera-Concepcion v. Puerto Rico*, 786 F. Supp. 2d 442 (D.P.R. 2010).
- 5 *Redondo Const. Corp. v. Puerto Rico Highway and Transp. Authority*, 357 F.3d 124 (1st Cir. 2004).
As to the effect of the 11th Amendment on actions against states, see § 106.

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[Construction and Application of Butler Act, 48 U.S.C.A. s 872, 187 A.L.R. Fed. 393](#)

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Gonzales Rose, [The Exclusion of Non-English-Speaking Jurors: Remediating a Century of Denial of the Sixth Amendment in the Federal Courts of Puerto Rico](#), 46 Harv. C.R.-C.L. L. Rev. 497 (2011)

Serrano, [Collective Memory and the Persistence of Injustice: From Hawaii's Plantations to Congress—Puerto Ricans' Claims to Membership in the Polity](#), 20 S. Cal. Rev. L. & Soc. Just. 353 (2011)

Particular federal statutes deal with governance of Puerto Rico.¹ The people of Puerto Rico have the right to organize a government pursuant to a constitution of their own adoption.² Although the Puerto Rican Constitution required congressional approval,³ it is not an act of Congress,⁴ and Congress may not amend Puerto Rico's Constitution unilaterally.⁵

Under the terms of the compact, Puerto Rico is sovereign over matters not governed by the Constitution of the United States.⁶ However, the creation of the Commonwealth of Puerto Rico did not so change its status that it must be considered a separate sovereign for the limited purposes of the dual sovereignty exception to the Double Jeopardy Clause because Puerto Rico is still constitutionally a territory rather than a separate sovereign.⁷

Congress now has similar powers over Puerto Rico as it possesses over federal states.⁸ The test whether a federal law preempts a Puerto Rican statute is the same as that under the Supremacy Clause with regard to the law of a state.⁹ However, Congress is permitted to treat Puerto Rico differently than a state, and a determination whether and how a federal statute applies to Puerto Rico is a question of congressional intent.¹⁰ Thus, while Puerto Rico possesses a measure of autonomy comparable to that possessed by the states, when Congress fails explicitly to refer to Puerto Rico in a statute, courts must inquire whether it intended to do so.¹¹ While federal courts generally presume that Congress intends that its laws have the same effect on Puerto Rico as they do on any state, that presumption may be overcome by specific evidence to the contrary or by clear policy reasons embedded in a statute.¹²

The Commonwealth of Puerto Rico continues to be a political subdivision of the United States,¹³ and federal statutes using the term "territory" may still be applicable to it.¹⁴ Furthermore, Puerto Rico, despite Commonwealth status, is still a "territory" within the meaning of the federal constitutional provision¹⁵ giving Congress the power to make rules and regulations for the territories.¹⁶ Puerto Rico is a territory of the United States within the meaning of the statute defining diversity jurisdiction.¹⁷ It has also been held that the compact legislation was at most regulatory and did not change Puerto Rico's fundamental political relationship to the United States.¹⁸

Specific provision is made concerning the citizenship of persons born in Puerto Rico.¹⁹

Even though the Constitution of Puerto Rico contains its own due process clause, citizens of Puerto Rico, as citizens of the United States, are entitled to invoke against the Commonwealth the fundamental due process guarantee contained in the U.S. Constitution, and that right may be vindicated in the federal courts and ultimately by the Supreme Court of the United States.²⁰ In effect, despite the lack of affirmative language in legislation making Puerto Rico an incorporated territory, the sequence of legislative actions indicates that its citizens are entitled to all, rather than just fundamental, constitutional guarantees.²¹ The residents of Puerto Rico are protected by the First Amendment.²² Puerto Rico is subject to the dormant Commerce Clause doctrine with regard to both interstate and foreign commerce.²³

The Commonwealth of Puerto Rico is similarly situated to a state for the purposes of bringing a *parens patriae* action.²⁴ On the other hand, while Puerto Rico has been treated as the functional equivalent of a state, this does not justify deviation from [Article I of the U.S. Constitution](#), which precludes residents of Puerto Rico from having the right to vote for members of the House of Representatives.²⁵ The effect of Congress's failure to grant Puerto Rico statehood on a Puerto Rican's dignity, pride, and honor did not constitute injury in fact sufficient to confer standing to bring suit challenging Congress's alleged failure to determine the Commonwealth's final political status, and standing was not conferred despite the resident's claim that he suffered legally cognizable harm because he lacked representatives in Congress and could not vote for President.²⁶

The Butler Act, which prohibits maintaining a suit for the purpose of restraining the assessment or collection of a Puerto Rican tax in federal district courts,²⁷ did not bar federal jurisdiction over a parcel delivery service's challenge to Puerto Rico's statutory scheme prohibiting interstate carriers from making deliveries without either prior proof of the recipient's payment of the territorial excise tax or the carrier's compliance with a complex, Customs Service-like alternative procedure since the

challenge did not seek to restrain tax collections directly, in the sense of challenging the Commonwealth's taxing authority, but raised constitutional objections to a system that targeted third parties instead of those who owed the tax directly.²⁸

CUMULATIVE SUPPLEMENT

Cases:

The limits of the Tenth Amendment do not apply to Puerto Rico, which constitutionally is a territory, because Puerto Rico's powers are not "[those] reserved to the States" but those specifically granted to it by Congress under its constitution. [U.S.C.A. Const. Art. 4, § 3, cl. 2](#); [U.S.C.A. Const. Amend. 10. Franklin California Tax-Free Trust v. Puerto Rico](#), 805 F.3d 322 (1st Cir. 2015).

For purposes of the Supremacy Clause, the laws of Puerto Rico are the functional equivalent of state laws, and the constitutionality of local ordinances is analyzed in the same way as that of statewide law. [U.S.C.A. Const. Art. 6, cl. 2. AES Puerto Rico, L.P. v. Trujillo-Panisse](#), 133 F. Supp. 3d 409 (D.P.R. 2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 [48 U.S.C.A. §§ 731 et seq.](#)
- 2 [48 U.S.C.A. § 731b.](#)
The Constitution of the Commonwealth of Puerto Rico became effective on July 25, 1952. History Note to [P.R. Const. Art. I, § 1.](#)
- 3 [48 U.S.C.A. § 731d.](#)
- 4 [Figueroa v. People of Puerto Rico](#), 232 F.2d 615 (1st Cir. 1956).
- 5 [U.S. v. Quinones](#), 758 F.2d 40 (1st Cir. 1985).
- 6 [Rodriguez v. Popular Democratic Party](#), 457 U.S. 1, 102 S. Ct. 2194, 72 L. Ed. 2d 628 (1982).
- 7 [U.S. v. Sanchez](#), 992 F.2d 1143 (11th Cir. 1993), on reconsideration, 3 F.3d 366 (11th Cir. 1993).
- 8 [U.S. v. Quinones](#), 758 F.2d 40 (1st Cir. 1985).
- 9 [Puerto Rico Dept. of Consumer Affairs v. Isla Petroleum Corp.](#), 485 U.S. 495, 108 S. Ct. 1350, 99 L. Ed. 2d 582 (1988).
As to the effect of the Supremacy Clause, see [Am. Jur. 2d, Constitutional Law §§ 53 et seq.](#)
- 10 [Antilles Cement Corp. v. Fortuno](#), 670 F.3d 310 (1st Cir. 2012).
- 11 [U.S. v. Laboy-Torres](#), 553 F.3d 715 (3d Cir. 2009).
For purposes of the interstate stalking statute ([18 U.S.C.A. §§ 10, 2261A\(1\)](#)), Puerto Rico is the functional equivalent of a state. [U.S. v. Walker](#), 665 F.3d 212 (1st Cir. 2011), petition for cert. filed (U.S. Feb. 23, 2012).
- 12 [Antilles Cement Corp. v. Fortuno](#), 670 F.3d 310 (1st Cir. 2012) (holding that the Buy America Act, [41 U.S.C.A. §§ 8301 et seq.](#) applied to Puerto Rico even though it did not apply to the states).
- 13 [Arbona v. Kenton](#), 126 F. Supp. 366 (S.D. N.Y. 1954).
- 14 [Moreno Rios v. U S](#), 256 F.2d 68 (1st Cir. 1958).
- 15 [U.S. Const. Art. IV, § 3, cl. 2.](#)
- 16 [Americana of Puerto Rico, Inc. v. Kaplus](#), 368 F.2d 431 (3d Cir. 1966).
- 17 [Detres v. Lions Bldg. Corp.](#), 234 F.2d 596 (7th Cir. 1956).
- 18 [Nestle Products, Inc. v. U. S.](#), 64 Cust. Ct. 158, 310 F. Supp. 792 (Cust. Ct. 3 Div. 1970).
- 19 [8 U.S.C.A. § 1402](#), discussed in [Am. Jur. 2d, Aliens and Citizens § 2221.](#)
- 20 [Mora v. Mejias](#), 206 F.2d 377 (1st Cir. 1953).

Actions attributable to the Puerto Rico government would be construed as actions of a state and are therefore subject to constitutional limitations of the 14th, rather than the Fifth, Amendment. [Laborde v. Rivera-Dueno](#), 719 F. Supp. 2d 198 (D.P.R. 2010), on reconsideration, 2011 WL 814965 (D.P.R. 2011).

21 [Consejo de Salud Playa de Ponce v. Rullan](#), 586 F. Supp. 2d 22 (D.P.R. 2008), as corrected, (Nov. 10, 2008).

As to the extent of constitutional protection depending on whether a territory is incorporated, see § 142.

22 [Mangual v. Rotger-Sabat](#), 317 F.3d 45 (1st Cir. 2003).

A Puerto Rico law that authorized municipalities to grant permits to neighborhood homeowners' associations to control access could be narrowly tailored to be consistent with the First Amendment as applied to a religious organization that distributed publications door-to-door. [Watchtower Bible and Tract Society of New York, Inc. v. Sagardia De Jesus](#), 634 F.3d 3 (1st Cir. 2011), cert. denied, 132 S. Ct. 549, 181 L. Ed. 2d 396 (2011).

23 [Antilles Cement Corp. v. Fortuno](#), 670 F.3d 310 (1st Cir. 2012).

24 [Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez](#), 458 U.S. 592, 102 S. Ct. 3260, 73 L. Ed. 2d 995 (1982).

As to states bringing actions on behalf of its citizens, or in parens patriae, generally, see § 94.

25 [Igartua v. U.S.](#), 626 F.3d 592 (1st Cir. 2010), petition for cert. filed, 80 U.S.L.W. 3450 (U.S. Nov. 2, 2011) and petition for cert. filed, 80 U.S.L.W. 3402 (U.S. Dec. 30, 2011).

26 [Orta Rivera v. Congress of U.S. of America](#), 338 F. Supp. 2d 272 (D.P.R. 2004).

27 48 U.S.C.A. § 872

28 [United Parcel Service, Inc. v. Flores-Galarza](#), 318 F.3d 323, 187 A.L.R. Fed. 739 (1st Cir. 2003).

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§ 150. Virgin Islands

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Specific provision is made by federal statute with regard to the Virgin Islands.¹ The Virgin Islands are an organized but not an incorporated territory² and are declared by statute an unincorporated territory.³ As such, the Virgin Islands are not a sovereign with a separate entity from that of the United States.⁴ However, the Revised Organic Act of 1954⁵ was intended to grant a greater degree of autonomy, economic as well as political, to the people of the Virgin Islands⁶ and has given the territory attributes of autonomy similar to those of a sovereign government or state.⁷

Observation:

It has been said that territories, such as the Virgin Islands, do not share the same sovereign independence with the states⁸ but also that even though it is a congressionally created territory, it has attributes of sovereignty, like a state.⁹

Congress has enacted a bill of rights for the Virgin Islands and has extended to the territory specified provisions of the Constitution of the United States.¹⁰ This bill of rights, even though conferred by act of Congress, expresses the congressional intention to make the U.S. Constitution applicable to the Virgin Islands to the fullest extent possible consistent with its status

as a territory.¹¹ The rights guaranteed by the Fifth Amendment have been extended to the Virgin Islands, including the right to a fair trial.¹²

The Commerce Clause, including dormant commerce clause ramifications, apply to the Virgin Islands through the Territorial Clause of the Constitution.¹³

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Footnotes

- 1 48 U.S.C.A. §§ 1392 et seq., 1405, 1408 et seq., 1541 et seq.
- 2 *Government of Virgin Islands v. Bodle*, 427 F.2d 532 (3d Cir. 1970); *Smith v. Government of Virgin Islands*, 375 F.2d 714 (3d Cir. 1967).
- 3 48 U.S.C.A. § 1541(a).
Congress did not exceed its constitutional authority in designating the Virgin Islands in the Revised Organic Act of 1954 as an unincorporated territory. *Ballentine v. U.S.*, 486 F.3d 806 (3d Cir. 2007).
- 4 *Harris v. US*, 125 F. Supp. 536 (D.V.I. 1954).
- 5 48 U.S.C.A. §§ 1541 et seq.
- 6 *Virgo Corp. v. Paiewonsky*, 384 F.2d 569 (3d Cir. 1967).
- 7 *In re Hooper's Estate*, 359 F.2d 569 (3d Cir. 1966).
- 8 *Bluebeard's Castle, Inc. v. Government of Virgin Islands*, 321 F.3d 394 (3d Cir. 2003).
- 9 *Bryan v. Turnbull*, 291 F. Supp. 2d 386 (D.V.I. 2003).
- 10 48 U.S.C.A. § 1561.
- 11 *In re Brown*, 439 F.2d 47 (3d Cir. 1971).
- 12 *U.S. v. Liburd*, 607 F.3d 339 (3d Cir. 2010).
- 13 *Molloy v. Government of the Virgin Islands*, 594 F. Supp. 2d 595 (D.V.I. 2007).

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§ 151. Guam

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Particular federal statutes specifically make provision with regard to Guam.¹ Guam is declared by statute to be an unincorporated territory.² Because Guam is an unincorporated territory, enjoying only such powers as may be delegated to it by the Congress, the government of Guam is, in essence, an instrumentality of the federal government.³

The Religious Freedom Restoration Act⁴ applies to Guam pursuant to Congress's plenary authority over territories.⁵ The Speedy Trial Clause in the Guam Organic Act is coterminous with the corresponding provision in the U.S. Constitution.⁶

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Footnotes

- 1 48 U.S.C.A. §§ 1421 et seq.
- 2 48 U.S.C.A. § 1421a.
- 3 *Sakamoto v. Duty Free Shoppers, Ltd.*, 764 F.2d 1285 (9th Cir. 1985).
- 4 42 U.S.C.A. § 2000bb-2(2) states that a covered entity under that Act includes each territory and possession of the United States.
The Religious Freedom Restoration Act is generally discussed in [Am. Jur. 2d, Constitutional Law](#) § 446.
- 5 *Guam v. Guerrero*, 290 F.3d 1210 (9th Cir. 2002).
- 6 *U.S. v. Drake*, 543 F.3d 1080 (9th Cir. 2008).

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§ 152. Northern Mariana Islands

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A Covenant establishes the Commonwealth of the Northern Mariana Islands (CNMI).¹ That Covenant created a unique relationship between the United States and the Commonwealth, and solely its provisions define the boundaries of those relations.² The provisions of the Covenant that the people of the CNMI have the right of local self governance and requiring mutual consent for any modification of fundamental provisions of the Covenant do not mean that Congress may not pass any legislation affecting the Commonwealth's internal affairs; accordingly, an immigration law that preempted territorial law relating to admission and removal of aliens came within the provision of the Covenant³ that the immigration and naturalization laws of the United States are applicable.⁴

The federal government's significant interest in combating international sex trafficking authorized Congress passing criminal laws on that subject applying to the Commonwealth of the Northern Mariana Islands.⁵ The statute criminalizing making telephonic bomb threats⁶ is enforceable in the Northern Mariana Islands since that statute was in existence on the effective date of the Covenant.⁷

A federal court of appeals lacks jurisdiction to review a judgment of the Supreme Court of the Commonwealth where the judgment rests on an adequate and independent territorial law ground.⁸

The 14th Amendment and the statutes enforcing it applies to the Commonwealth of the Northern Mariana Islands.⁹

A nonvoting delegate may be sent by the Commonwealth of the Northern Mariana Islands to the House of Representatives.¹⁰

Footnotes

- 1 48 U.S.C.A. §§ 1801 et seq.
- 2 Eche v. Holder, 742 F. Supp. 2d 1136 (D. N. Mar. I. 2010).
The authority of the United States towards the Commonwealth of the Northern Mariana Islands arises solely under the Covenant. [Commonwealth of the Northern Mariana Islands v. U.S.](#), 670 F. Supp. 2d 65 (D.D.C. 2009).
- 3 48 U.S.C.A. § 1806.
- 4 Commonwealth of the Northern Mariana Islands v. U.S., 670 F. Supp. 2d 65 (D.D.C. 2009).
- 5 U.S. v. Chang Da Liu, 538 F.3d 1078 (9th Cir. 2008).
- 6 18 U.S.C.A. § 844(e), discussed in Am. Jur. 2d, Explosions and Explosives § 196.
- 7 U.S. v. Dela Cruz, 358 F.3d 623 (9th Cir. 2004).
- 8 In re Estate of Dela Cruz, 279 F.3d 1098 (9th Cir. 2002).
As to the relationship of the District Court for the Northern Mariana Islands to the federal courts, generally, see Am. Jur. 2d, Federal Courts § 2245.
- 9 Sagana v. Tenorio, 384 F.3d 731 (9th Cir. 2004), as amended, (Oct. 18, 2004).
- 10 48 U.S.C.A. §§ 1751 et seq.

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§ 153. Eastern Samoa

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Specific federal statutes have been enacted pertaining to Eastern Samoa,¹ including one allowing a nonvoting delegate in Congress.² Although it is an unorganized territory, Eastern Samoa is a "territory of the United States" within the meaning of the Sherman Anti-Trust Act.³

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Footnotes

- ¹ 48 U.S.C.A. §§ 1661 et seq.
- ² 48 U.S.C.A. §§ 1731 et seq.
- ³ U. S. v. Standard Oil Co. of Cal., 404 U.S. 558, 92 S. Ct. 661, 30 L. Ed. 2d 713 (1972).

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Federal statutes provide for the governance of the Trust Territory of the Pacific Islands.¹ The federal government has also entered into Compacts of Free Association with the Federated States of Micronesia, the Marshall Islands,² and Palau.³

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Footnotes

¹ 48 U.S.C.A. §§ 1681 et seq.

² 48 U.S.C.A. §§ 1901 et seq.

³ 48 U.S.C.A. §§ 1931 et seq.

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